APPEAL NO. 020689
FILED APRIL 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). This case returns following our decision in Texas Workers' Compensation Commission Appeal No. 012732, decided December 31, 2001, which remanded for identification of the correct insurance carrier. The hearing officer has issued a remand decision which incorporates his earlier Decision and Order as well as the record developed at the contested case hearing he held on September 25, 2001, and which contains an additional hearing officer exhibit containing the carrier information required by House Bill 2600. The appellant (self-insured) has appealed on evidentiary insufficiency grounds the hearing officer's determinations that the respondent (claimant) sustained a compensable repetitive trauma injury; that the date of the injury was _____; and that the self-insured is not relieved of liability for this claim because of the claimant's failure to provide the employer with timely notice of the injury. The claimant has filed a response, urging the correctness of the challenged findings and conclusions.

DECISION

Affirmed.

COMPENSABLE INJURY

The hearing officer did not err in determining that the claimant sustained a compensable repetitive trauma injury. The claimant asserted that he sustained new injuries to his knees as a result of repetitive squatting, kneeling, and "duck walking" while working on the assembly line at (employer). The self-insured does not dispute that the claimant performed repetitive activities in the workplace, but asserts that such activities did not result in new injuries to the claimant. Whether the claimant sustained the claimed knee injuries as a result of his repetitive work-related activities was a question of fact for the hearing officer to decide. Texas Workers' Compensation Commission Appeal No. 002021, decided October 11, 2000. There was conflicting evidence presented with regard to this issue. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the claimant's medical evidence, the hearing officer could find that the claimant's repetitive, physically traumatic work activities caused or aggravated a preexisting degenerative condition in his knees. The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

DATE OF INJURY

The hearing officer did not err in determining that the claimant's date of injury was _____. Section 408.007 provides that the date of injury for an occupational disease "is the date on which the employee knew or should have known that the disease may be related to the employment." The date of injury under Section 408.007 is a question of fact for the hearing officer to resolve. While the claimant admitted a history of prior knee problems, he testified that after working on the assembly line all day he experienced a new pain sensation in a different part of his right knee on _____, while at work. In view of the claimant's testimony, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

NOTICE OF INJURY

The hearing officer did not err in determining that the self-insured is not relieved from liability for this claim because of a failure by the claimant to timely report the injury to the employer. Section 409.001(a)(2) provides, in relevant part, that an employee or a person acting on the employee's behalf shall notify the employer of an injury not later than the 30th day after the date on which the employee knew or should have known that the injury may be related to the employment. Failure to notify an employer as required by Section 409.001(a) relieves the employer and the carrier (the self-insured, in this case) of liability, unless the employer or carrier has actual knowledge of the injury, good cause exists, or the claim is not contested. Section 409.002.

The self-insured asserts that the claimant failed to report that his injury was work related when he informed his employer of his condition on May 5, 1997. This was a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 000150, decided March 10, 2000. The hearing officer could infer from the company nurse's records and the claimant's testimony that the claimant did relate his knee injury to the employer when he informed the company nurse of his condition on May 5, 1997. The hearing officer's determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain, *supra*.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

SELF-INSURED
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

Philip F. O'Neill
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Gary L. Kilgore
Appeals Judge